

# ENVIRONMENTAL QUALITY

## CHAPTER 210

### SENATE BILL NO. 2237

(Senator Bell)

AN ACT to amend and reenact section 23.1-06-07 of the North Dakota Century Code, relating to limitations on regulation of coal-fueled electric generating units; to provide a penalty; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 23.1-06-07 of the North Dakota Century Code is amended and reenacted as follows:

#### **23.1-06-07. Requirements for adoption of air quality rules more strict than federal standards.**

1. Notwithstanding any other provisions of this title, the department may not adopt air quality rules or standards affecting coal conversion and associated facilities, coal-fueled electric generating units, petroleum refineries, or oil and gas production and processing facilities which are more strict than federal rules or standards under the federal Clean Air Act [42 U.S.C. 7401 et seq.], nor may the department adopt air quality rules or standards affecting such facilities when there are no corresponding federal rules or standards, unless the more strict or additional rules or standards are based on a risk assessment that demonstrates a substantial probability of significant impacts to public health or property, a cost-benefit analysis that affirmatively demonstrates that the benefits of the more stringent or additional state rules and standards will exceed the anticipated costs, and the independent peer reviews required by this section.
2. The department shall hold a hearing on any rules or standards proposed for adoption under this section on not less than ninety days' notice. The notice of hearing must specify all studies, opinions, and data that have been relied upon by the department and must state that the studies, risk assessment, and cost-benefit analysis that support the proposed rules or standards are available at the department for inspection and copying. If the department intends to rely upon any studies, opinions, risk assessments, cost-benefit analyses, or other information not available from the department when it gave its notice of hearing, the department shall give a new notice of hearing not less than ninety days before the hearing which clearly identifies the additional or amended studies, analyses, opinions, data, or information upon which the department intends to rely and conduct an additional hearing if the first hearing has already been held.
3. In this section:

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- a. "Cost-benefit analysis" means both the analysis and the written document that contains:
- (1) A description and comparison of the benefits and costs of the rule and of the reasonable alternatives to the rule. The analysis must include a quantification or numerical estimate of the quantifiable benefits and costs. The quantification or numerical estimate must use comparable assumptions, including time periods, specify the ranges of predictions, and explain the margins of error involved in the quantification methods and estimates being used. The costs that must be considered include the social, environmental, and economic costs that are expected to result directly or indirectly from implementation or compliance with the proposed rule.
  - (2) A reasonable determination whether as a whole the benefits of the rule justify the costs of the rule and that the rule will achieve the rulemaking objectives in a more cost-effective manner than other reasonable alternatives, including the alternative of no government action. In evaluating and comparing the costs and benefits, the department may not rely on cost, benefit, or risk assessment information that is not accompanied by data, analysis, or supporting materials that would enable the department and other persons interested in the rulemaking to assess the accuracy, reliability, and uncertainty factors applicable to the information.
- b. "Risk assessment" means both the process used by the department to identify and quantify the degree of toxicity, exposure, or other risk posed for the exposed individuals, populations, or resources, and the written document containing an explanation of how the assessment process has been applied to an individual substance, activity, or condition. The risk assessment must include a discussion that characterizes the risks being assessed. The risk characterization must include the following elements:
- (1) A description of the exposure scenarios used, the natural resources or subpopulations being exposed, and the likelihood of these exposure scenarios expressed in terms of probability.
  - (2) A hazard identification that demonstrates whether exposure to the substance, activity, or condition identified is causally linked to an adverse effect.
  - (3) The major sources of uncertainties in the hazard identification, dose-response, and exposure assessment portions of the risk assessment.
  - (4) When a risk assessment involves a choice of any significant assumption, inference, or model, the department, in preparing the risk assessment, shall:
    - (a) Rely only upon environmental protection agency-approved air dispersion models.
    - (b) Identify the assumptions, inferences, and models that materially affect the outcome.

- (c) Explain the basis for any choices.
  - (d) Identify any policy decisions or assumptions.
  - (e) Indicate the extent to which any model has been validated by, or conflicts with, empirical data.
  - (f) Describe the impact of alternative choices of assumptions, inferences, or mathematical models.
- (5) The range and distribution of exposures and risks derived from the risk assessment.
- c. The risk assessment and cost-benefit analysis performed by the department must be independently peer reviewed by qualified experts selected by the environmental review advisory council.
4. This section applies to any petition submitted to the department under section 23.1-01-04 which identifies air quality rules or standards affecting coal conversion facilities, coal-fueled electric generating units, or petroleum refineries that are more strict than federal rules or standards under the federal Clean Air Act [42 U.S.C. 7401 et seq.] or for which there are no corresponding federal rules or standards, regardless of whether the department has previously adopted the more strict or additional rules or standards pursuant to section 23.1-01-04. This section also applies to any petitions filed under section 23.1-01-04 affecting coal conversion facilities, coal-fueled electric generating units, or petroleum refineries that are pending on the effective date of this section for which new rules or standards have not been adopted, and the department shall have a reasonable amount of additional time to comply with the more stringent requirements of this section. To the extent section 23.1-01-04.1 conflicts with this section, the provisions of this section govern. This section does not apply to existing rules that set air quality standards for odor, hydrogen sulfide, visible and fugitive emissions, or emission standards for particulate matter and sulfur dioxide, but does apply to new rules governing those standards.

**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 23, 2021

Filed March 24, 2021

## CHAPTER 211

### SENATE BILL NO. 2238

(Senator Bell)

AN ACT to create and enact section 23.1-06-16 of the North Dakota Century Code, relating to the state regional haze plan; to provide a penalty; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** Section 23.1-06-16 of the North Dakota Century Code is created and enacted as follows:

##### **23.1-06-16. Implementation of federal regional haze program requirements.**

1. Consistent with the federal Clean Air Act [42 U.S.C. 7401 et seq.] and the regulations adopted under the Clean Air Act, the department shall develop and implement a state regional haze plan in accordance with this section.
2. The state regional haze plan must include an analysis of the natural and international causes of visibility impairment.
3. In developing a periodic comprehensive revision of the state implementation plan, the department shall consider whether additional measures are necessary to make reasonable progress toward meeting the national goal of visibility improvement, as required by the federal Clean Air Act [42 U.S.C. 7401 et seq.] and further defined by the United States environmental protection agency to be natural visibility conditions by 2064. The department may not require controls the department has determined serve only to increase total costs with little corresponding visibility benefit.
4. If the environmental protection agency disapproves the state regional haze plan, the department may develop and submit as expeditiously as possible a revised plan to address the reasons for the disapproval in accordance with the requirements of this section.
5. Any new control measures mandated by the state regional haze plan are effective only upon final approval by the environmental protection agency.
6. If federal laws, a federal court, or a final federal agency action renders any control measures included in the state plan unenforceable by the environmental protection agency, the requirement to implement the measures may not be enforced under state law to the same extent the measures are unenforceable under federal law.

**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 23, 2021

Filed March 24, 2021

## CHAPTER 212

### SENATE BILL NO. 2070

(Energy and Natural Resources Committee)  
(At the request of the Department of Environmental Quality)

AN ACT to create and enact sections 23.1-10-04, 23.1-10-05, 23.1-10-06, 23.1-10-07, 23.1-10-08, 23.1-10-09, 23.1-10-10, 23.1-10-11, 23.1-10-12, 23.1-10-13, 23.1-10-14, 23.1-10-15, 23.1-10-16, and 23.1-10-17 of the North Dakota Century Code, relating to the regulated substance response; to amend and reenact sections 11-33-01, 23.1-10-02, 40-47-01, and 58-03-11 of the North Dakota Century Code, relating to the regulated substance response; to repeal sections 23.1-04-04 and 23.1-10-01 of the North Dakota Century Code, relating to contaminated properties; to provide a continuing appropriation; and to provide for retroactive application.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 11-33-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **11-33-01. County power to regulate property.**

For the purpose of promoting health, safety, morals, public convenience, general prosperity, and public welfare, the board of county commissioners of any county may regulate and restrict within the county, subject to chapter 54-21.3, the location and the use of buildings and structures and the use, condition of use, or occupancy of lands for residence, recreation, and other purposes. The board of county commissioners and a county zoning commission shall state the grounds upon which any request for a zoning amendment or variance is approved or disapproved, and written findings upon which the decision is based must be included within the records of the board or commission. The board of county commissioners shall establish zoning requirements for solid waste disposal and incineration facilities before July 1, 1994. The board of county commissioners may impose tipping or other fees on solid waste management and incineration facilities. The board of county commissioners may not impose any fee under this section on an energy conversion facility or coal mining operation that disposes of its waste onsite. The board of county commissioners may establish institutional controls that address environmental concerns with the department of environmental quality as provided in section ~~23.1-04-04~~23.1-10-16.

**SECTION 2. AMENDMENT.** Section 23.1-10-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **23.1-10-02. Environmental quality restoration fund - Continuing appropriation.**

There is established an environmental quality restoration fund into which the funds recovered in this chapter may be deposited. The fund is to be administered by the department of environmental quality and may be used by the department for costs of environmental assessment, removal, corrective action, or monitoring as determined on a case-by-case basis. All moneys placed in the fund under this section and section 23.1-10-05 are appropriated to the department on a continuing basis.

**SECTION 3.** Section 23.1-10-04 of the North Dakota Century Code is created and enacted as follows:

**23.1-10-04. Definitions.**

As used in this chapter, unless the context otherwise requires:

1. "Containment unit" means any one or a combination of containers, vessels, and enclosures, including structures and appurtenances connected to them, which or has been used to contain or dispense a regulated substance and is either stationary or attached to a motor vehicle. The definition includes pipeline facilities that transport and store regulated substances.
2. "Corrective action" means an action taken to investigate, minimize, contain, eliminate, remediate, mitigate, monitor, or clean up a release including any necessary emergency remedial effort.
3. "Corrective action cost" means any cost incurred by the department in conducting or overseeing corrective actions performed on a release; or the performance of reasonable measures undertaken to prevent or mitigate damage to the public health, public safety, public welfare, or environment of the state.
4. "Department" means the department of environmental quality.
5. "Emergency remedial effort" means an action taken to protect the public health, public safety, or environment from imminent danger resulting from a release, and an action taken to contain a release that, if not contained, will pose in time a greater threat to the public health, public safety, or environment than if the action is not taken immediately.
6. "Environment" means land, including public and private property, surface and underground waters, fish, wildlife, biota, air, and other similar resources within the state.
7. "Fund" means the environmental quality restoration fund.
8. "Institutional controls" and "activity and use limitations" are restrictions on the use and management of real property, including buildings or fixtures, containing or preventing migration of regulated substances or other pollution or contamination, or protecting receptors from exposure or the threat of exposure to regulated substances or other pollution or contamination. Institutional controls may apply:
  - a. During environmental remediation activities; or
  - b. To residual regulated substances, pollutants, or other pollution or contamination or the byproducts of residual regulated substances, pollutants, or other pollution or contamination which may remain on property after active environmental remediation activities are concluded or while natural attenuation of regulated substances or other pollution or contamination is occurring.
9. "Potentially responsible party" means a person identified as a possible cause of, or contributor to, contamination or pollution on a site or property.

10. "Regulated substance" means a compound designated by the department, including pesticides and fertilizers regulated by the department of agriculture; the hazardous substances designated by the Federal Water Pollution Control Act [Pub. L. 80-845; 62 Stat. 1155; 33 U.S.C. 1251 et seq.]; the toxic pollutants designated by the Federal Water Pollution Control Act and the Toxic Substances Control Act [Pub. L. 94-469; 90 Stat. 2003; 15 U.S.C. 2601 et seq.]; the hazardous substances designated by the federal Comprehensive Environmental Response, Compensation, and Liability Act [Pub. L. 96-510; 94 Stat. 2767; 42 U.S.C. 9601 et seq.]; petroleum, petroleum substances, oil, gasoline, kerosene, fuel oil, oil sludge, oil refuse, production water, oil mixed with other wastes, crude oils, substances, or additives to be utilized in refining or blending crude petroleum or petroleum stock; any other oil or petroleum substance; solid waste regulated under chapter 23.1-08; and technologically enhanced naturally occurring radioactive material regulated under chapter 23.1-03. Radioactive material other than technologically enhanced naturally occurring radioactive material is not a regulated substance under this chapter.
11. "Release" means an intentional or unintentional act or omission that results in the discharge, spill, leak, emission, escape, or disposal of a regulated substance into the environment and harms or threatens harm to public health or public safety or the environment.
12. "Responsible party" means a person that causes or contributes to an onsite or offsite release or threatened release, or that is responsible for an illegal or unpermitted storage, of a regulated substance that results in the contamination or pollution of a property or site.

**SECTION 4.** Section 23.1-10-05 of the North Dakota Century Code is created and enacted as follows:

**23.1-10-05. Revenue to the fund.**

Revenue from the following sources must be deposited in the state treasury and credited to the fund:

1. If the balance of the fund is less than five million dollars, moneys recovered by the department in an action or administrative proceeding based on violation of the state's environmental statutes, including actions for administrative expense recoveries, civil penalties, compensatory damages; and money paid pursuant to any agreement, stipulation, or settlement. This section does not limit the department's ability to agree to a supplemental environmental project as part of a settlement.
2. Moneys donated to the department for the purposes of this chapter.
3. Transfers from the abandoned oil and gas well plugging and site reclamation fund under subdivision f of subsection 2 of section 38-08-04.5.
4. Moneys received from a federal agency for the purpose of this section.
5. Any other moneys as may be deposited in the fund for use in carrying out the purposes of this chapter.

**SECTION 5.** Section 23.1-10-06 of the North Dakota Century Code is created and enacted as follows:

**23.1-10-06. Release of regulated substance prohibited - Exception.**

The release of a regulated substance is prohibited. This section does not apply to releases of regulated substances pursuant to and in compliance with the conditions of a federal or state environmental permit.

**SECTION 6.** Section 23.1-10-07 of the North Dakota Century Code is created and enacted as follows:

**23.1-10-07. Releases from petroleum tanks.**

Releases from petroleum tanks are subject to this chapter, but the department may expend moneys in the fund to address releases from petroleum tanks only if there are no available moneys in the petroleum tank release compensation fund under chapter 23.1-12.

**SECTION 7.** Section 23.1-10-08 of the North Dakota Century Code is created and enacted as follows:

**23.1-10-08. Responsible parties.**

1. If the department determines a release has occurred, the department shall identify the responsible party.
2. If no other viable responsible party can be located after the department's reasonable investigation, the department shall consider a person that became an owner of the property after the release to be a responsible party, subject to the limitations in this section.
  - a. Notwithstanding any other provision of law and except as expressly provided by federal law, a person that acquires property is not liable for an existing regulated substance on the property if the person:
    - (1) Acquired the property after the disposal or placement of the regulated substance on, in, or at the property; and at the time the property was acquired did not know and had no reason to know a regulated substance was disposed of on, in, or at the property;
    - (2) Is a governmental entity that acquired the property by escheat, by tax sale, by foreclosure, through any other involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation; or
    - (3) Acquired the property by inheritance or bequest, and did not know a regulated substance was disposed of on, in, or at the property; or is the owner of the surface estate and the regulated substance was released as a result of oil or gas drilling and production operations, or other operation authorized by chapter 38-08, and the owner of the surface estate is not and has never been an operator of oil and gas wells permitted under chapter 38-08.
  - b. To establish the person had no reason to know a regulated substance was disposed of on, in, or at the property, the person must have undertaken, at the time of acquisition, all appropriate inquiries into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of this requirement, the department shall take into account any specialized knowledge or

experience on the part of the person, the relationship of the purchase price to the value of the property as uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of regulated substances at the property, and the ability to detect the regulated substances by appropriate inspection.

- c. A person that has acquired real property may establish a rebuttable presumption the person has made all appropriate inquiries if the person establishes the person performed an investigation of the property, conducted by an environmental professional immediately before or at the time of acquisition, to determine or discover the obviousness of the presence or likely presence of a release or threatened release of regulated substances on the property.
  - d. The presumption does not arise unless the person has maintained a compilation of the information reviewed during the investigation.
  - e. This section does not diminish the liability of a previous owner or operator of the property which otherwise would be liable under this chapter, and nothing in this section affects the liability under this chapter of a person that, by any act or omission, caused or contributed to the release or threatened release of a regulated substance that is the subject of the action relating to the property.
  - f. As used in this section, "environmental professional" means an individual, or entity managed or controlled by an individual, such as an engineer, environmental consultant, and attorney, who, through academic training, occupational experience, and reputation, can objectively conduct one or more aspects of an environmental investigation.
3. A lender-owner is liable for a release or threatened release of a regulated substance only as provided in chapter 32-40.1.

**SECTION 8.** Section 23.1-10-09 of the North Dakota Century Code is created and enacted as follows:

**23.1-10-09. Duty to provide information - Inspections.**

1. When requested by the department, a responsible or potentially responsible party, or owner of real property where a release or threatened release is located or where response actions are proposed to be taken, shall furnish to the department any information the person may have or reasonably may obtain which is relevant to the release or threatened release.
2. The department, upon presentation of credentials, may:
  - a. Examine and copy any books, papers, records, memoranda, or data of any person that has a duty to provide information to the department under subsection 1; and
  - b. Enter upon any property, public or private, to take action authorized by this chapter, including obtaining information from a person that has a duty to provide the information under subsection 1, conducting surveys or investigations, and taking removal or remedial action.

**SECTION 9.** Section 23.1-10-10 of the North Dakota Century Code is created and enacted as follows:

**23.1-10-10. Authority to establish and enforce remediation requirements.**

In determining the appropriate standards to be achieved by corrective actions taken or requested under this chapter to protect public health and welfare and the environment from a release or threatened release, the department shall consider the planned use of the property where the release or threatened release is located. This chapter does not limit the authority of the department to establish environmental standards for remediation of air, soil, or water pollution pursuant to this title or chapters 61-28 and 61-28.1, or to enforce site-specific environmental remediation requirements in particular cases.

**SECTION 10.** Section 23.1-10-11 of the North Dakota Century Code is created and enacted as follows:

**23.1-10-11. Action to compel performance - Injunctive relief.**

1. The department may make a request for corrective action to a responsible party. A request must be in writing, state the action requested, the reasons for the action, and reasonable times for the action to begin and be completed taking into account the urgency of the action for protection of the public health or welfare or the environment.
2. If a person responsible for a release or threatened release of a regulated substance fails to take corrective actions or make reasonable progress in completing corrective actions requested under subsection 1, the department may bring an action to compel performance of the requested corrective actions. If any person having any right, title, or interest in and to the real property where the containment unit is located or where corrective actions are proposed to be taken is not a person responsible for the release or threatened release, the person may be joined as an indispensable party in an action to compel performance to assure the requested corrective actions can be taken on that property by the responsible parties.
3. The release or threatened release of a regulated substance may constitute a public nuisance and may be enjoined in an action brought by the department.

**SECTION 11.** Section 23.1-10-12 of the North Dakota Century Code is created and enacted as follows:

**23.1-10-12. Cost recovery.**

The department may recover its reasonable and necessary expenses incurred under this chapter, including all corrective action costs and administrative and legal expenses, in a civil action brought against a responsible party. The department's certification of expenses is prima facie evidence the expenses are reasonable and necessary. The department shall provide written notice to a responsible party before incurring costs, except when prior notice is not possible because identity of the responsible party is unknown or situations require emergency remedial efforts.

**SECTION 12.** Section 23.1-10-13 of the North Dakota Century Code is created and enacted as follows:

**23.1-10-13. Corrective action costs as lien - Filing of notice of lien - Contents - Attachment priority.**

All corrective action costs expended from the fund pursuant to this chapter constitute a lien on all property owned by the responsible party when a notice of lien is filed with the recorder in the county where the property is located. The notice of lien must contain a description of the property of the responsible party upon which the lien is made, a description of the property upon which corrective action or emergency remedial efforts were made, and a statement of the corrective action costs expended from the fund. Upon entry, the lien must attach to all real property of the responsible party. The lien has priority over all other claims or liens on the property, except those perfected before the department's filing of the notice of lien.

**SECTION 13.** Section 23.1-10-14 of the North Dakota Century Code is created and enacted as follows:

**23.1-10-14. Other remedies.**

This chapter does not limit the powers of the department or preclude the pursuit of any other administrative, civil, injunctive, or criminal remedies by the department or any other person. Administrative remedies do not need to be exhausted to proceed under this chapter. The remedies provided by this chapter are in addition to those provided under other statutory or common law.

**SECTION 14.** Section 23.1-10-15 of the North Dakota Century Code is created and enacted as follows:

**23.1-10-15. Voluntary response actions - Liability protection - Procedures.**

1. Subject to the provisions of this section, a person that is not otherwise responsible under this chapter or another environmental law for a release or threatened release is not responsible solely because the person undertakes and completes response actions to remove or remedy releases or threatened releases at an identified area of real property in accordance with a voluntary cleanup agreement.
2. A person requesting liability protection under this section shall submit an application in the form required by the department. The requestor also shall submit a voluntary response action plan that includes an investigation report prepared by an appropriate professional describing the methods and results of an investigation of the releases and threatened releases at the identified area of real property, methods of investigation, and the analytical results and professional's evaluation of the reported information. The department may approve the application only if the department determines the nature and extent of the releases and threatened releases at the identified area of real property have been identified and evaluated adequately in the investigation report. The department's approval also must be based on consideration of the following:
  - a. If reuse or development of the property is proposed, the voluntary response action plan provides for all response actions required to carry out the proposed reuse or development;
  - b. The response actions and the activities associated with any reuse or development proposed for the property will not aggravate or contribute to releases or threatened releases that are not required to be removed or remedied under the voluntary response action plan, and will not interfere with or substantially increase the cost of response actions to address the remaining releases or threatened releases; and

- c. The owner of the property or other relevant person agrees to cooperate with the department or other persons acting at the department's direction in taking response actions necessary to address remaining releases or threatened releases, and to avoid any action that interferes with the response actions.
3. If the department approves the application, the department and requestor shall enter a voluntary cleanup agreement in which the department agrees to take no action under title 23.1 and chapters 61-28 and 61-28.1 against the requestor and those persons identified in subsection 5 so long as the plan is implemented pursuant to the agreement's terms and with the exercise of due care. As part of the agreement, the department may require the owner, requestor, or other relevant person agrees to any of the following conditions:
  - a. To provide access to the property;
  - b. To allow reasonable and necessary activities at the property, including placement of borings, wells, equipment, and structures on the property; and
  - c. To enter an environmental covenant for the property containing institutional controls under chapter 47-37. Alternatively, institutional controls may be imposed on the property using zoning regulations under section 23.1-10-16.
4. Response actions taken under a voluntary cleanup agreement are not complete until the department certifies completion in writing. The department shall issue a certificate of completion if the parties demonstrate to the department's satisfaction the response action is complete. If a voluntary response action plan does not require removal or remedy of all regulated substances, the department may condition the certificate of completion on the owner's, requestor's, or other relevant person's continued compliance with conditions in the voluntary cleanup agreement or other conditions deemed necessary by the department.
5. In addition to the person that undertakes and completes a voluntary response action pursuant to a voluntary cleanup agreement, the liability protection provided by this section applies to the following persons so long as the persons comply with any conditions imposed by the department under subsection 4:
  - a. The owner of the identified property, if the owner is not responsible for any release or threatened release identified in the approved voluntary response action plan;
  - b. A person providing financing to the person that undertakes and completes the response actions or that acquires or develops the identified property;
  - c. A fiduciary that arranges for the undertaking and completion of response actions; and
  - d. A successor or assignee of a person to which the liability protection applies.

6. Notwithstanding subsection 1, when a person that is responsible for a release or threatened release undertakes and completes response actions, the protection from liability provided by this section applies to persons described in subsection 5 if the response actions are undertaken and completed in accordance with the following:
  - a. The response actions must be undertaken and completed in accordance with a voluntary cleanup agreement.
  - b. When the department issues a certificate of completion for response actions completed by a responsible party, the department and the responsible party may enter an agreement that resolves the responsible party's future liability to the department for the release or threatened release addressed by the response actions.
7. The protection from liability provided by this section does not apply to a person that:
  - a. Aggravates or contributes to a release or threatened release that was not remedied under an approved voluntary response action plan; or
  - b. Obtains the department's approval of a voluntary cleanup agreement for purposes of this section by fraud or misrepresentation or by knowingly failing to disclose material information, or that knows the approval was so obtained before taking an action that would have made the person subject to the protection of this section.
8. This section does not affect the authority of the department to exercise any powers or duties with respect to a new or additional release or threatened release of a regulated substance on a property or site regulated under this section, or the right of the department or any other person to seek legal or equitable relief against a person not subject to a liability protection provided under this section.

**SECTION 15.** Section 23.1-10-16 of the North Dakota Century Code is created and enacted as follows:

**23.1-10-16. Zoning regulations establishing institutional controls.**

1. If an area made subject to institutional controls involves two or more property owners and an area larger than either one city block or ten acres [4.05 hectares], the department and the political subdivision having zoning authority over the property may agree to institutional controls relating to the identified area impacted by the release or threatened release. Before the institutional controls become effective, the controls must be the subject of a public hearing and be established in the same manner as zoning regulations are established by that political subdivision. The political subdivision shall provide all notices under this subdivision, but any public hearing must be held jointly by the political subdivision and the department.
2. The department shall consider the factors in subsection 2 of section 23.1-10-15 before agreeing to institutional controls under this section.
3. Institutional controls may be terminated or amended at any time by written agreement between the department and the relevant political subdivision.

**SECTION 16.** Section 23.1-10-17 of the North Dakota Century Code is created and enacted as follows:

**23.1-10-17. Liability protections issued before August 1, 2021.**

This chapter does not affect liability protections related to releases or threatened releases of regulated substances issued by the department before August 1, 2021. These liability protections remain in effect, subject to any conditions that were imposed by the department and the statutes in effect on the date issued.

**SECTION 17. AMENDMENT.** Section 40-47-01 of the North Dakota Century Code is amended and reenacted as follows:

**40-47-01. Cities may zone - Application of regulations.**

For the purpose of promoting health, safety, morals, or the general welfare of the community, the governing body of any city may, subject to the provisions of chapter 54-21.3, regulate and restrict the height, number of stories, and the size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes. ~~Such~~The regulations may provide that a board of adjustment may determine and vary the application of the regulations in harmony with ~~their~~the regulations' general purpose and intent and in accordance with general or specific rules ~~therein~~ contained in the regulations. The governing body of a city may establish institutional controls that address environmental concerns with the department of environmental quality as provided in section ~~23.1-04-04~~23.1-10-16.

**SECTION 18. AMENDMENT.** Section 58-03-11 of the North Dakota Century Code is amended and reenacted as follows:

**58-03-11. Establishment of zoning districts - Uniformity.**

For the purpose of promoting the health, safety, morals, or the general welfare, or to secure the orderly development of approaches to municipalities, the board of township supervisors may establish one or more zoning districts and within ~~such~~the districts ~~may~~, subject to the provisions of chapter 54-21.3 and section 58-03-11.1, may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings and structures; ~~the~~ height, number of stories, and size of buildings and structures; ~~the~~ percentage of lot that may be occupied; ~~the~~ size of courts, yards, and other open spaces; ~~the~~ density of population; ~~and~~ the location and use of buildings, structures, and land for trade, industry, residence, or other purposes. All ~~such~~ regulations and restrictions under this section must be uniform throughout each district, but the regulations and restrictions in one district may differ from those in other districts. The board of township supervisors may establish institutional controls that address environmental concerns with the department of environmental quality as provided in section ~~23.1-04-04~~23.1-10-16.

**SECTION 19. REPEAL.** Sections 23.1-04-04 and 23.1-10-01 of the North Dakota Century Code are repealed.

**SECTION 20. RETROACTIVE APPLICATION.** This Act is retroactive in application.

Approved March 23, 2021

Filed March 24, 2021

## CHAPTER 213

### SENATE BILL NO. 2098

(Judiciary Committee)  
(At the request of the Highway Patrol)

AN ACT to amend and reenact subsections 1 and 2 of section 23.1-15-05, subsection 1 of section 23.1-15-07, and sections 23.1-15-08 and 23.1-15-09 of the North Dakota Century Code, relating to abandoned vehicles.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsections 1 and 2 of section 23.1-15-05 of the North Dakota Century Code are amended and reenacted as follows:

1. When an abandoned motor vehicle does not fall within the provisions of section 23.1-15-04, the unit of government or commercial towing service taking it into custody shall give notice of the taking within ten days. The notice must set forth the date and place of the taking, the year, make, model, and serial number of the abandoned motor vehicle, and the place where the vehicle is being held, must inform the owner and any lienholders or secured parties of their right to reclaim the vehicle under section 23.1-15-06, and must state that failure of the owner or, lienholders, or secured parties to exercise their right to reclaim the vehicle within thirty days is deemed a waiver by ~~them~~the owner, lienholders, or secured parties of all right, title, and interest in the vehicle and a consent to the disposal of the vehicle pursuant to section 23.1-15-07, and must state the end date of the thirty-day period during which the owner may reclaim the abandoned vehicle.
2. The notice must be sent by certified mail, return receipt requested, to the registered owner, if any, of the abandoned motor vehicle and to all readily identifiable lienholders or secured parties of record. If it is impossible to determine with reasonable certainty the identity and address of the registered owner and all lienholders, the notice must be published once in a newspaper of general circulation in the area where the motor vehicle was abandoned or placed on the official website for the unit of government that initiated the impound process from public property. When posted on a website, the notice must be placed in a designated area on the official website for a minimum of thirty days and must include the information in subsection 1. Published notices may be grouped together for convenience and economy. Failure of the owner, lienholders, or secured parties to exercise the right to reclaim the vehicle by the end of the public notice period is deemed a waiver by the owner, lienholders, or secured parties of all right, title, and interests in the vehicle and a consent to the disposal of the vehicle pursuant to section 23.1-15-07.

<sup>146</sup> **SECTION 2. AMENDMENT.** Subsection 1 of section 23.1-15-07 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>146</sup> Section 23.1-15-07 was also amended by section 5 of Senate Bill No. 2048, chapter 337.

1. An abandoned motor vehicle not more than seven model years of age taken into custody by a unit of government and not reclaimed under section 23.1-15-06 must be sold to the highest bidder at public auction or sale, following reasonable published notice. The purchaser must be given a receipt in a form prescribed by the department of transportation which is sufficient title to dispose of the vehicle. The receipt also entitles the purchaser to register the vehicle and receive a certificate of title, free and clear of all liens and claims of ownership. The license plates displayed on an abandoned vehicle must be removed and destroyed prior to the purchaser taking possession of the vehicle.

**SECTION 3. AMENDMENT.** Section 23.1-15-08 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-15-08. Disposal of vehicles not sold.**

When no bid has been received for an abandoned motor vehicle, the unit of government or a commercial towing service that is a licensed scrap iron processor may dispose of it pursuant to contract under section 23.1-15-09.

**SECTION 4. AMENDMENT.** Section 23.1-15-09 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-15-09. Contracts for disposal - Issuance of licenses by department of environmental quality - Reimbursement of units of government and commercial towing services for costs.**

1. A unit of government may contract with any qualified licensed scrap iron processor for collection, storage, incineration, volume reduction, transportation, or other services necessary to prepare abandoned motor vehicles and other scrap metal for recycling or other methods of disposal. The contract may authorize the contracting scrap iron processor to pay to the owner of any abandoned motor vehicle an incentive payment for vehicle if it is voluntarily surrendered and delivered to the scrap iron processor. For purposes of this section, an owner of an abandoned motor vehicle includes only a person that has owned and operated the vehicle for the person's personal or business use.
2. The department may issue a license to any qualified scrap iron processor desiring to participate in a contract under this section that~~which~~ meets the requirements for solid waste disposers established by the department.
3. ~~When~~Before a unit of government enters a contract with a scrap iron processor duly licensed by the department, the department may review the contract to determine whether it conforms to the department's plan for solid waste disposal. A contract that does conform may be approved by the department. When a contract has been approved, the department may reimburse the unit of government for the costs incurred under the contract, including incentive payments authorized and made under the contract, subject to the limitations of legislative appropriations.
4. Before a commercial towing service that is a scrap iron processor duly licensed by the department enters a contract with the department, the department may review the contract to determine whether it conforms to the department's plan for solid waste disposal. A contract that does conform may be approved by the department. When a contract has been approved, the

department may reimburse the commercial towing service for the costs incurred under the contract for towing and up to thirty days of storage charges resulting from taking an abandoned motor vehicle into custody, subject to the limitations of legislative appropriations.

5. The department may demand that a unit of government or a commercial towing service that is a licensed scrap iron processor contract for the disposal of abandoned motor vehicles and other scrap metal under the department's plan for solid waste disposal. When the unit of government or the commercial towing service fails to contract within one hundred eighty days of the demand, the department, on behalf of the unit of government, may contract with any scrap iron processor duly licensed by the department for such disposal.

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